IN THE HIGH COURT OF JUDICATURE AT PATNA
Cr.Misc. No.10321 of 2007
ANIRUDH SAH & ORS
Versus
STATE OF BIHAR & ANR
----

5. 2.9.2008. Heard the learned counsel for the petitioners as also the learned A.P.P. for the State. Although O.P. No.2 was duly served with notice yet he has not cared to appear in this case and contest the application.

The petitioners are aggrieved by order dated 16.2.2006 , whereby the learned Chief Judicial Magistrate, Banka, has differed with the final form submitted by the I.O. in connection with Banka (Barahat) P.S. Case No.328 of 2004 and has taken cognizance against the petitioners under Sections 304-B, 201/34 I.P.C.

WEB COPY NOT OFFICIAL

The grievance of the petitioners is that no reason has been assigned by the learned Chief Judicial Magistrate, Banka, for having differed with the final form submitted by the I.O..

I have perused the impugned order dated 16.2.2006 and after perusal of the same, it appears that the submission advanced by the learned counsel for the petitioners is correct. The learned Magistrate has merely stated that he has perused the F.I.R. and the case diary and from the same a prima facie case is made out. However, no reasons for differing with the final report have been assigned. Curiously he has not even mentioned the fact that the police had submitted a final form and he was differing from it.

In view of the discrepancies and irregularity apparent on the face of the order dated 16.2.2006 passed in Banka (Barahat) P.S. Case

No.328 of 2004, the same is hereby set aside and the matter is remitted back to the learned Chief Judicial Magistrate, Banka for considering the same afresh. If he decides to differ with the final form submitted by the I.O., he must assign the reasons for doing so.

In the result, this application is allowed and the impugned order dated 16.2.2006 is hereby quashed and the matter is remitted back to the learned Chief Judicial Magistrate, Banka, who will act in accordance with the observations made hereinabove and pass orders in accordance with law.

(Abhijit Sinha,J)

P.S.

WEB COPY NOT OFFICIAL